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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 KATHRYN TOWNSEND GRIFFIN, *et*
4 *al.*,

5 Plaintiffs,

6 v.

17 Civ. 5221 (LLS)

7 EDWARD CHRISTOPHER SHEERAN,
8 personally known as Ed
9 Sheeran, *et al.*,

10 Defendants.

11 New York, N.Y.
12 May 4, 2023
13 12:15 p.m.

14 Before:

15 HON. LOUIS L. STANTON,

16 District Judge
17 - and a Jury -

18 APPEARANCES

19 FRANK & ASSOCIATES PC
20 BY: PATRICK RYAN FRANK
21 KEISHA RICE
22 KATHERINE VIKER
23 - and -

24 BEN CRUMP LAW
25 BY: BEN CRUMP
Attorneys for Plaintiffs

26 PRYOR CASHMAN LLP
27 Attorneys for Defendants
28 BY: ILENE SUSAN FARKAS
29 DONALD S. ZAKARIN
30 ANDREW MARK GOLDSMITH
31 BRIAN MAIDA

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(In the robing room; jury not present)

THE COURT: As you know, we've gotten a question from the jury: "Are we required to answer question No. 1, or may we skip to question 2?"

An understandable question, and I'm told that your votes are respectively no and yes, and that's why we're here. I'd like to hear your thoughts.

MR. ZAKARIN: Yeah.

MS. FARKAS: Your Honor, just given that number — I mean, presumably your Honor put them in an order for a reason, and so given that question No. 1 would — if it's answered in the — if it's answered in a certain way could potentially streamline things, then it seems to make sense.

I'm also wondering — but I'm wondering a lot of things right now. There's a lot of thoughts going through my brain trying to read tea leaves, and I'm wondering if the jury may need a little clarification. If a little clarification, if it was mutually acceptable on question No. 1, might facilitate them getting an answer, if I can make —

THE COURT: Tell them what?

MS. FARKAS: So glasses on because I can't see.

THE COURT: OK.

MS. FARKAS: I'm just throwing it out there. The way that it reads now is: Did defendant Sheeran establish by a preponderance of the evidence that he independently created

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1 "Thinking Out Loud" and thus did not infringe the copyright of
2 "Let's Get it On"?

3 THE COURT: Yes.

4 MS. FARKAS: I'm wondering if we add a few words, that
5 we say: Did defendant establish by a preponderance of the
6 evidence that he independently created "Thinking Out Loud,"
7 i.e., independent from "Let's Get it On," and thus did not
8 infringe the copyright of "Let's Get it On"?

9 MR. ZAKARIN: The thought of that, your Honor, is
10 there was a lot of talk about the influence of Van Morrison on
11 Mr. Sheeran. And it dawned on us, maybe the jury, in thinking
12 about independent creation, is thinking, well, if he did
13 something that was intended to emulate Van Morrison, is that
14 independent creation? So maybe that clarification helps the
15 jury to understand that it's only independent of "Let's Get it
16 On."

17 MS. FARKAS: Not everything else.

18 MR. ZAKARIN: Maybe it doesn't, but maybe it does. If
19 it does, then that may solve the jury's problem, if they have
20 one. Other than that, if — our view is if the jury is perhaps
21 stuck on 1, maybe some of them believe he independently
22 created; maybe some of them are unsure and want to go on to
23 further questions to think about it and to answer them. If
24 they are prevented from going forward unless they answer 1 and
25 they remain sort of deadlocked, undecided, that doesn't help

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1 anybody.

2 So we can see going past 1 — skipping 1 and coming
3 back to it, but we thought maybe in the first instance
4 clarifying 1 a little bit. If that helps the jury, maybe
5 that's useful.

6 MS. RICE: Oh, your Honor, with respect to the
7 recommendation about language, we don't know the reason that
8 they're stuck. All we know is that the question that they've
9 asked. So from that perspective, we believe that if the
10 question is simply whether or not they need to provide an
11 answer to 1 before going to 2 --

12 THE COURT: That's the question.

13 MS. RICE: -- then we believe that that should be —
14 in order to go to No. 2, they don't have to provide any answers
15 to look at and evaluate any of the questions. However, once
16 they do provide an answer to No. 1, then that will dictate
17 their path through the rest of the verdict form. So they can
18 think about or discuss No. 2, but once they decide and put an
19 answer on No. 1, that dictates the path through the rest of the
20 form.

21 MR. FRANK: And if I could supplement what Ms. Rice —

22 THE COURT: Oh, yes, we only take double arguments
23 from —

24 MR. FRANK: OK. I'm sorry. I won't say —

25 MR. ZAKARIN: I thought that was only in closings.

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1 THE COURT: — from the Townsend side.

2 MR. FRANK: I apologize, your Honor.

3 THE COURT: No, no.

4 MR. FRANK: I was just going to respectfully and
5 simply suggest, and Don may be — Mr. Zakarin might be right
6 about them being stuck. We don't know. But it occurred to me,
7 when we were evaluating this, that in order to do a fully
8 realized evaluation of independent creation, because obviously
9 copying —

10 THE COURT: What's your point?

11 MR. FRANK: Copying as set forth in the analysis below
12 in 2 through 7, if there's evidence of copying, that would
13 abrogate an independent creation defense. So I think it's fair
14 for them to evaluate whether there's been copying, if that's
15 what they want to do, because that would inform their decision
16 on independent creation.

17 THE COURT: Well, it's reciprocal. If there's
18 independent creation, you don't get to the others. You sign
19 the verdict and come in.

20 MR. FRANK: Absolutely.

21 MS. FARKAS: Actually, that's consistent with my
22 proposed clarification, because if it's independent from "Let's
23 Get it On," that, obviously, is synonymous with they're not
24 copying.

25 MR. ZAKARIN: It may not solve the problem, but it

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1 might.

2 MS. FARKAS: I just thought it was not inconsistent
3 and might give a fine-tuning that maybe would solve the problem
4 or just maintain the problem.

5 MR. ZAKARIN: We prefer not —

6 THE COURT: A lot of jury questions invite a lot of
7 speculation.

8 MS. FARKAS: Sure.

9 THE COURT: That's human nature. But I remember when
10 I was practicing and we had some similar situation come up,
11 that a wise, very much respected lawyer from San Francisco said
12 that it's an old rule of law that if the man playing the piano
13 hits the wrong key, he gets the wrong music. And in dealing
14 with questions from the jury, the best path is to be entirely
15 literal and answer that question. They're always able to ask
16 another, and that's the way the situation evolves.

17 My thinking is to answer no, meaning that question
18 doesn't have to be answered, is to deprive Townsend or/and you
19 of a jury trial. This goes right to the heart of the case, and
20 you're entitled to a jury verdict on it. I think the answer to
21 their question is no, we want a jury determination. Then we'll
22 see what happens.

23 MR. ZAKARIN: See what the next question is.

24 THE COURT: Exactly.

25 MR. ZAKARIN: OK. We'll see. You're right, your

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1 Honor. This was just a suggestion in case it's clarity that
2 they want, but if they want clarification —

3 THE COURT: I understand that.

4 MR. ZAKARIN: — they'll tell us.

5 THE COURT: But this is — and I take it he agrees.
6 Do you agree with the answer?

7 MR. FRANK: That, no, they don't have to answer the
8 first question?

9 MR. ZAKARIN: No, they have to.

10 THE COURT: The question is, are we required to
11 answer? The answer is yes, you are required to answer. And I
12 think I might add to it, the parties are entitled to a jury
13 trial.

14 MR. FRANK: So, yes, they're required to answer that
15 first?

16 THE COURT: Excuse me?

17 MR. FRANK: I'm sorry.

18 MS. RICE: It's not about first.

19 THE COURT: "Skip" means not answer.

20 MR. FRANK: OK. I'm sorry. Yes, your Honor.

21 THE COURT: This may be a tough question for them.

22 MR. FRANK: Yeah.

23 MR. ZAKARIN: The answer is yes, they have to answer
24 the question. I think that's right.

25 THE COURT: I think I'll just say, "You're required to

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1 answer question No. 1," pick up their language.

2 I'm thinking of adding a sentence. I've got you're
3 required to answer question 1. That's the fundamental thing.
4 But in view of some of your thoughts, we might add a sentence
5 saying: "The order in which you decide on your answers in your
6 deliberations is up to you."

7 MS. RICE: Yes, your Honor.

8 MR. FRANK: Yes, your Honor.

9 MS. RICE: Yes, your Honor.

10 THE COURT: It's not a dance.

11 MS. RICE: Yeah, yeah.

12 THE COURT: Because it is a little fuzzy about that,
13 answer this before you go to this.

14 MS. RICE: Yes, your Honor.

15 THE COURT: I can't believe they aren't talking about
16 the other questions as we were.

17 MR. ZAKARIN: I'm sure they are.

18 THE COURT: "You're required to answer the question
19 No. 1. The order in which you consider the questions in your
20 deliberations is up to you."

21 MS. RICE: Yes, your Honor.

22 THE COURT: Anybody want to inspect it, they're
23 welcome to.

24 MR. ZAKARIN: I trust you. You've got neater
25 handwriting than I do.

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1 MS. RICE: You do.

2 THE COURT: It's legible. May be wrong, but it's
3 legible.

4 MR. ZAKARIN: It's a start.

5 THE COURT: Thank you.

6 (Recess pending verdict)

7 (At 1:00 p.m., verdict)

8 (Jury present)

9 THE DEPUTY CLERK: Members of the jury, please state
10 your attendance when I call out your name.

11 Juror 1.

12 JUROR NO. 1: Here.

13 THE DEPUTY CLERK: Juror 2?

14 JUROR NO. 2: Here.

15 THE DEPUTY CLERK: Juror 3?

16 JUROR NO. 3: Here.

17 THE DEPUTY CLERK: Juror 4?

18 JUROR NO. 4: Here.

19 THE DEPUTY CLERK: Juror 5?

20 JUROR NO. 5: Here.

21 THE DEPUTY CLERK: Juror 6?

22 JUROR NO. 6: Here.

23 THE DEPUTY CLERK: Juror 7?

24 JUROR NO. 7: Here.

25 THE DEPUTY CLERK: Thank you.

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1 Jury foreperson, can you please stand. Have you
2 reached a verdict?

3 THE FOREPERSON: Yes.

4 THE COURT: Thank you.

5 THE DEPUTY CLERK: Members of the jury, please listen
6 to your verdict as it stands recorded.

7 Special verdict form: Did defendant Sheeran establish
8 by a preponderance of the evidence that he independently
9 created "Thinking Out Loud" and thus did not infringe the
10 copyright of "Let's Get it On"?

11 Answer: Yes.

12 THE COURT: Members of the jury, you have been — this
13 completes your jury service on this notice, and you're free to
14 go home.

15 You have been an attentive and responsible jury, I
16 must say, on time and here and listened. And on behalf of
17 everybody, everybody connected with the trial, I want to thank
18 you for being attentive and participating by the attention that
19 you gave to what was going on. It's very hard to articulate,
20 but there's no question that it makes a difference to the
21 experience of the trial if the jury is following it closely and
22 attentively. It holds the whole thing together, and it makes
23 it a much more enjoyable process for everybody related to it.

24 Now, the case — I think it is the eighth day. It
25 took time out of your life, time and why? Well, it was

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1 important to the plaintiff. They lost, but it was important to
2 have the trial. It was important to the defendants, and it's
3 important that everybody feels that the result was fair. It's
4 a lawsuit. Somebody wins, somebody loses, but the loser knows
5 that the case was considered carefully and decided fairly by
6 persons that they chose to do that, people who are neutral, who
7 have nothing in favor of them or against them, and people who
8 don't even know them and who listen to all the evidence and the
9 arguments in the case and reached a fair decision.

10 The right to a fair hearing is basic to all of our
11 other rights, and you've taken your time giving them, the
12 parties, that fair hearing. You're entitled to take
13 satisfaction in performing that service. I hope you found it
14 interesting. And when your friends ask you how to avoid jury
15 service, tell them that it's a worthwhile thing to do.

16 You get not only our thanks, but I think your checks
17 will be sent to you in the mail. So — oh, one thing. You now
18 can discuss anything you want about the trial with anybody you
19 choose. You're restored to your full rights as citizens. In
20 doing that, nobody will pursue you or pressure you to talk
21 about it. If you prefer not to talk about it, just say, "I
22 don't want to talk about it," and they'll honor that.

23 As I say, if you choose to talk to them, you are free
24 to say whatever you want. In doing that, there's one area that
25 — and it's entirely up to you; nobody controls — but you

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1 might consider that in the area of what anybody, any one of
2 you, said in the deliberations is to be regarded as under seal
3 of confidence. It has decency in its favor, but it also allows
4 jurors in other cases to feel that they can speak freely and
5 change their mind, make arguments, abandon them, whatever, in
6 the give and take of a negotiation without thinking that
7 they're going to be quoted publicly afterwards.

8 I would recommend that you take that position with
9 respect to your deliberations, but it's up to you. We trust
10 you in that, as in so many other different ways.

11 So thank you very much, and you're excused with the
12 thanks of the court and the public.

13 JUROR: Thank you, Judge.

14 (Adjourned)
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